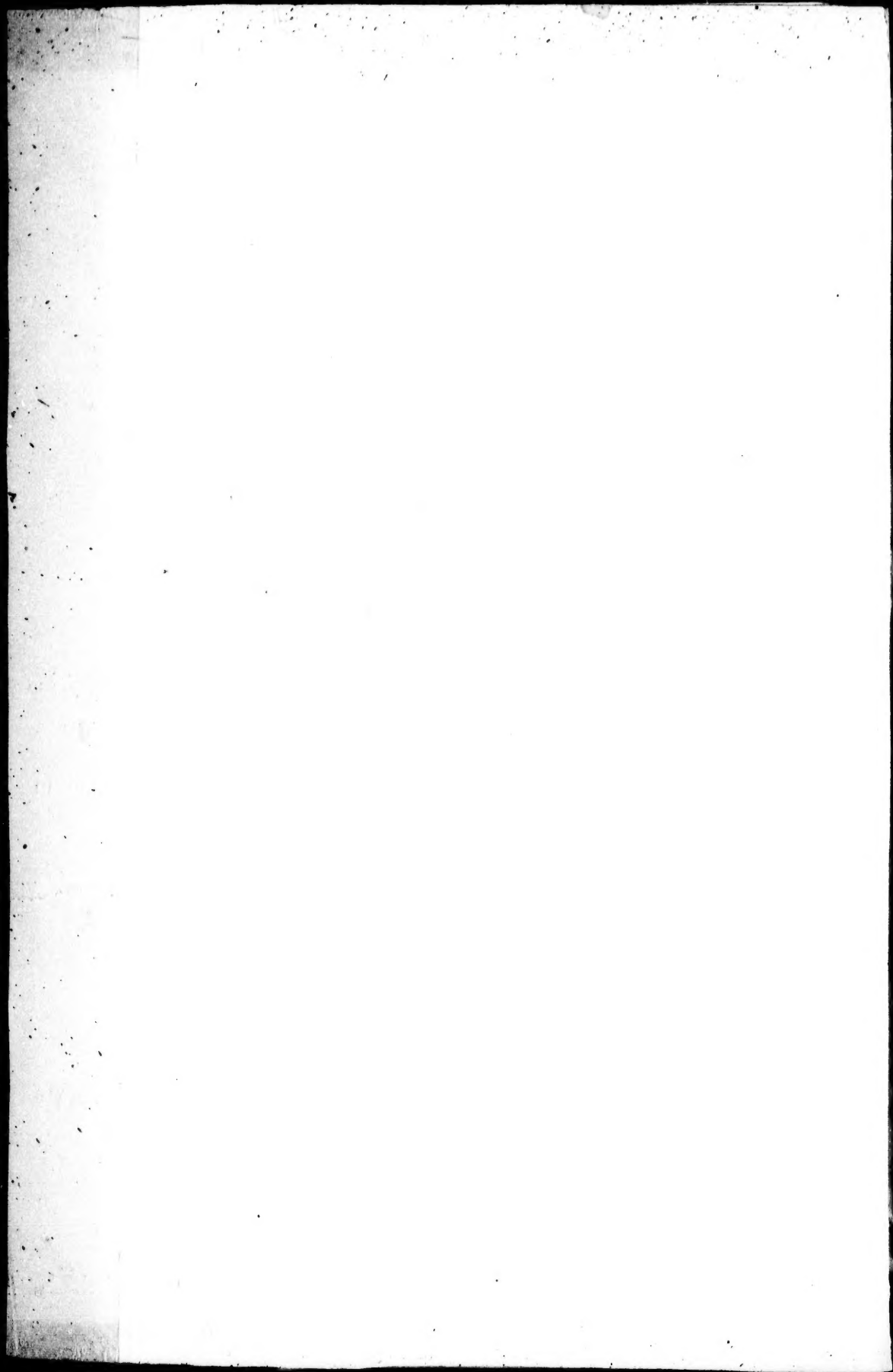




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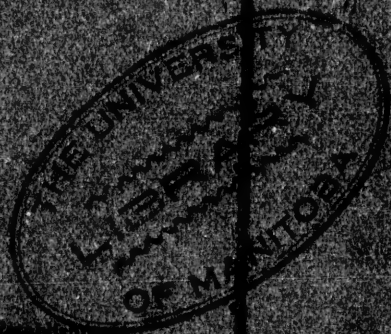
Free Christian Schools

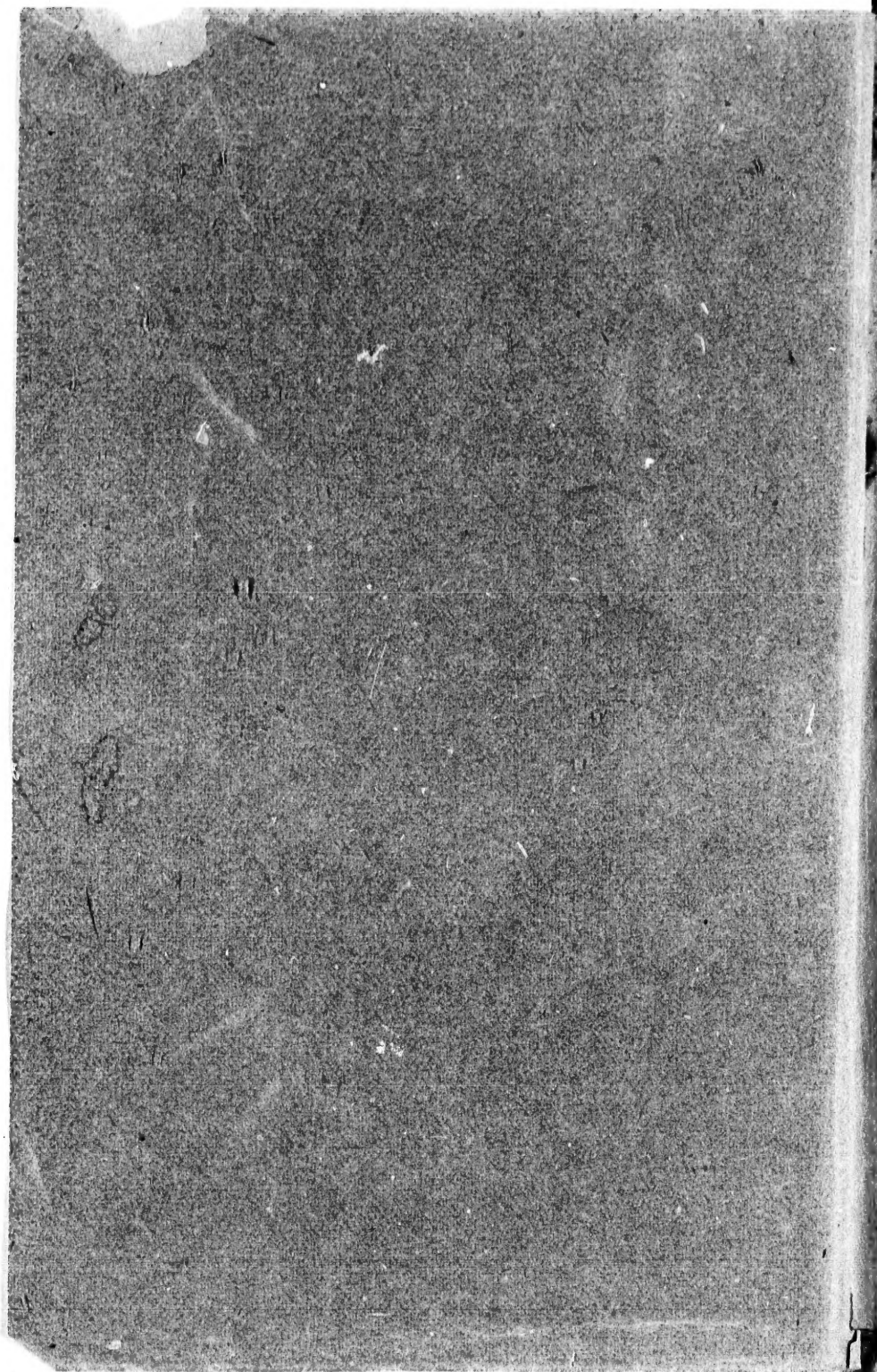
IN MANITOBA

WITNESSES

"Standard" Book and Job Printing Establishment

1911





DENOMINATIONAL
OR
Free Christian Schools
IN MANITOBA.

To the Editor of the Standard.

SIR,—While publishing your views on the question of Public Schools, you kindly expressed the satisfaction you experienced on seeing that others likewise give their opinion on the subject. This persuades me that you will liberally grant space in your columns for a series of articles I intend to publish.

I regret to have to say, in the first place, that my convictions might be diametrically opposed to yours, nevertheless, I am convinced that, animated with a liberal spirit, and friendly to loyal and frank discussion, you will not be averse to fair play, and that you will afford your readers the opportunity to find in your own paper the reasons others have, to not share the opinions you have therein expressed. Articles ably written have treated the subject more lengthily and more cleverly than I can venture to

to do, but as they may not have come to the notice of your readers, the latter so numerous in the Province, and yourself, sir, will be generous enough to receive, if not with pleasure, at least with courtesy, the counterpart of your own assertions.

Before mentioning the sphere intended for my observations, I beg leave to take a glance over our actual law of education.

The first Parliament of Manitoba during its first session, passed an Act that was sanctioned on the 31st of May, 1871. An amendment of detail received force of law on the 21st of February, 1872. The 8th March, 1873, sanction was given to amendments so considerable, that the Act enclosing them was styled "The Amended School Act." The second Parliament added to the great amount of work accomplished during its first session, "An Act further to amend the Act to establish a system of education in this Province." and on the 14th May, 1875, the twenty-nine clauses of the said Act, received in the name of the Queen, the sanction of the Lieutenant-Governor.

Moreover on the 14th February, 1876 His Honor sanctioned the forty-five sections of "An Act to amend the School Acts of Manitoba, so as to meet the special requirement of incorporated cities and towns." All this legislation evidently proves that the legislators of Manitoba have been earnestly pre-occupied concerning the question of education to which they have devoted a large share of their labours.

The above laws have been enacted, either with

the unanimity, or at least, with the majority of the Legislative Council and Legislative Assembly. They have all been sanctioned by the Lieutenant-Governor in the name of the Queen, none of them have been disavowed by the more immediate representative of the Sovereign.

Therefore the said laws are duly and lawfully the code that govern the Province of Manitoba, with regard to the education of its children. The actual laws of education admit and protect the principle of denominational schools, and in fact, as well as in name, make them either Protestant or Catholic, entirely distinct and independent among themselves and respectively submitted *only to the section of the Board of Education to which they belong.*

The Protestant section of the Board of Education has under its control the management of the Protestant schools. It has the power to make from time to time such regulations as may be deemed fit for their general management and discipline to arrange for the proper examination, grading, and licensing of its teachers, and for the withdrawal of the license on sufficient cause; to select all the books, maps, and globes to be used in its schools; and to approve of plans and dimensions for the erection of school houses under its control; the same Protestant section of the Board, has the power to erect, divide, and subdivide Protestant school districts where it thinks proper throughout the Province; all school taxes and assessments paid by Protestants are *exclusively for the maintenance of Protestant schools.* The money voted by the Leg-

islative Assembly for educational purposes is divided in proportion to the school population of each section. Therefore the Protestants have the half, the two-thirds, the three-fourths of the Government grant, if they have the half, the two-thirds, the three-fourths, &c., of the school population. In a word *the Protestant schools are entirely under the control and jurisdiction of Protestants*; they receive all the money paid by Protestants for assessments, and they have their due share of public funds.

The Catholics having nothing to do with the Protestant schools they have no action in them, and consequently they can in no way impede their success, welfare, and prosperity. The law, in granting such independence to the Protestant schools, and in protecting them against the intrusion of Catholics, even were the latter more numerous, secures similar independence to Catholic schools against the interference of Protestants, notwithstanding the latter being the majority in the Province. Such is the fundamental principle of the School Law of Manitoba.

Defective as this law may be in other respects, it is nevertheless true to say that the principle on which it is based is commended by a host of distinguished statesmen and publicists, together with other eminent men of all countries, ranks and denominations. The same principle has made the prosperity of certain nations, while placing them foremost in civilization; and without seeking illustration abroad, every one knows that the two most important Provinces of the Canadian Confe-

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deration have separate schools, and are satisfied with the system ; while, respecting the rights of all, this system opens a wide field to noble and generous emulation, which, as a general rule, secures more ample and better results.

On the other hand, we see the same principle opposed by men who think they have a right to lead public opinion. But allow me to say that mere opposition to a system of education does not prove that the same is contrary "to the more enlightened spirit of the present age." It is surely a mistake to think that "the triumph of the principle of justice" consists in replacing the system adopted here by the very improperly termed "Unsectarian public school system."

I have no knowledge of Catholics having any desire to bring a radical change in our school laws. I am not even aware whether the Protestant population, left to itself, *and not agitated by extreme men, moved by sectarian views, or political ambition*, would ever think of bringing about the proposed change, or of forcing it upon their fellow citizens. On the event of the Protestant population not being satisfied with the actual condition of things, I will take the liberty to respectfully make the following suggestions :

1st, Allow the Catholics to enjoy the liberty you would surely claim, were you in their place, do not meddle with their schools, otherwise nor more than you would wish them to do were they the majority in the Province. 2nd. If your own school regulations do not meet your approbation you can easily bring a remedy without agitating

our Province, and injuring the just susceptibilities, and the conscientious convictions of others. You are masters of your own position, make your own schools what you wish them to be, but leave to Catholic Schools the character held dear by their supporters.

I have already fully stated, and every one knows that the Protestants have the control of their schools by the *actual law* ; they teach only what they like, they can leave off in their teaching all that displeases them, they can if they choose exclude all religious teaching, that concerns themselves, the law secures them that right and I do not think the Catholics will ever object to it. On the other hand I see neither liberality nor justice on the part of the majority, to endeavor to control the Catholic Schools, or to destroy their autonomy, in order to govern them.—Instead of setting forth an irritating, useless, and dangerous question, that has already occasioned such deplorable results even within our young Confederation, why do not the friends and advocates of this pretended reform, turn their zeal towards what is *naturally, and by the law under their authority* ? If the proposed change be the result of divergence of opinion among the different Protestant sects, and if the latter agree to it, let the Protestant section of the Board of Education accomplish the change in the schools under its control and they will then have "unsectarian schools" for their children.—If it be the wish of Protestants, let the Board exclude from their school everything Episcopalian, Presbyterian, Methodist &c, and if they choose all that is Christian, let

them make the experiment in their midst, and in what concerns them. When a generation will have reaped the fruits thereof, and proved by experience the efficiency of the system to secure the moral and intellectual improvement of its partizans, then surely you will have no trouble in obtaining the co-operation of the Catholics, who naturally will be only too happy to secure for themselves the benefits enjoyed by others. *Then, but not till then*, people will see the realization of the hope expressed by the *Free Press* in its issue of the 25th. August last.

"We have little doubt that the prelates of that Church (Catholic) will see the wisdom and justice of complying with public opinion in a reform that will conduce to the general well being of the people." In my opinion the prelates of the Catholic Church have the well being of the people sufficiently at heart to willingly and promptly adopt any system of education that experience would prove it them to be the most advantageous.

So far the thing is merely being ventilated in our young Province, and unfortunately the result of the trial elsewhere is far, very far from being satisfactory, so without any uneasiness as to what the prelates of the Catholic Church will say hereafter, I take the liberty, and I do so without hesitation, to affirm that the system termed "unsectarian public schools" meet with no sympathy on my part, and in order not to appear unreasonable allow me to say what I think of the system in a legal, religious, and social point of view.

First.—THE ESTABLISHMENT OF "NON-SECTARIAN SCHOOLS IN MANITOBA, WOULD BE ILLEGAL.

The first question that presents itself to the mind in the actual controversy is this: Has the Legislature of Manitoba power to repeal the present educational laws and to replace them by a system repugnant to the minority of this Province. I do not hesitate in saying that our legislature has no such power. The minority of the Province having rights or privileges acquired and acknowledged, such rights or privileges are under the safe guard of a superior authority, and consequently, the power of the legislative Assembly of Manitoba does not extend so far as to violate such rights or privileges. Any law enacted in the above sense would be *ultra vires* null, and certainly disallowed at Ottawa.

I understand the magnitude and delicacy of the task imposed upon a tribunal called upon to decide on the validity of a legislature Act. I understand the importance and lucidity of the proofs that such a tribunal would require to become convinced that the highest legal authority in the Province had failed and gone beyond the limits assigned to its legislative power.

I know all this, but I am equally aware that in the case of usurpation of power, the superior authority has the obligation to discountenance such proceedings, and to grant to those who are unjustly dealt with, the protection to which they are entitled by the laws that govern them. Legislature independence, warranted to the different Provinces of the Canadian confederation, is justly precious to every Canadian, and surely no one should act in a

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way to diminish such an important prerogative. On the other hand, it is the duty of the Provincial Legislature not to attempt anything beyond the restrictions expressed in the Imperial Acts that constitute the same legislature. It is a cause of legitimate pride for the inhabitants of a Province to know and to feel that they are free; but it is equally necessary to their happiness to know, and to feel that they are protected. Protection is as necessary as freedom of which it is the complement. Without the protection for some the freedom of others may easily degenerate into license. Citizens would loose the respect and reliance on the noble institutions that govern the country, should the protection to which they have a right, be in their estimation, inferior to the freedom they enjoy.

The theory of absolute power vested in the Provincial Legislature in all cases, is entirely inadmissible, as the Imperial Acts that established such legislature have limited their action in a clear and precise manner. It is obvious that the question of education is among those on which it is not lawful to enact without certain restrictions.

Before proceeding any further on the matter, I wish to review the objection that has been improperly raised as based on the sub-section of section 92 of "The British North American Act, 1867." To invoke the said sub-clause as a proof that each province has an entire, absolute and unrestrained power relative to education, denote a very superficial study of the Act itself. "The British North American Act" classifies the matters of which it treats under XI titles, within XI principal divi-

sions, some of which are subdivided. The following synoptic table of matters contained in the said Act, will show at first sight, the futility of the objection I combat :

BRITISH NORTH AMERICA ACT, 1867.

Remarks.

I. Preliminary.

II. Union-

III. Executive Power.

IV. Legislative Power. — The Senate ; The House of Commons. 1. Ontario. 2. Quebec. 3. Nova Scotia. 4. New Brunswick. Money votes. Royal assent.

V. Provincial Constitutions. Executive Power. Legislative Power. 1. Ontario. 2. Quebec. 3. Ontario and Quebec. 4. Nova Scotia and New Brunswick. 5. Ontario, Quebec and Nova Scotia. 6. The four Provinces.

VI. Distribution of Powers of Parliament. Exclusive Powers of Provincial Legislature. Education. Uniformity of Laws in Ontario, Nova Scotia, and New Brunswick. Agriculture and Immigration.

VII. Judicature.

VIII. Revenues, Debts, Assets, Taxation.

IX. Miscellaneous Provisions—General, Ontario
and Quebec.

X. Intercolonial Railway.

XI. Admission of other Colonies.
Schedules

Such are the divisions and subdivisions of the "British North America Act." It is certainly an elementary rule of interpretation to say that, when an Act has divisions under certain titles, the very words used as titles of the divisions when employed in any section of the said Act, mean the matters contained in the division to which such words are prefixed as title. Therefore the words "*Constitution of the Province*," used in the clause 92, must necessarily refer to what, and to nothing but to what is contained within the division V under the title *Provincial Constitutions*.

The clause 92 belongs to division VI, and its first sub-section reads as follows: 1. "The Amendment from time to time notwithstanding anything in this Act of the *Constitution of the Province*, except as regards the office of Lieutenant-Governor."

One must close his eyes to the evidence and to the clearest and most natural sense of the words not to read in the above mentioned sub-section the very title of the division V. "Provincial Constitutions." And the division V being the only part of the Act that fixes the Provincial Constitutions, is the only part of the said act referred to, by the said sub-section of the clause 92. On the contrary "Education" being neither *Constitution of the Province*, nor even mentioned in the division V cannot be aimed at by the sub-section which now occupies me, and

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which treats only of amendments of the *Constitutions of the Province*.

The Division VI of our "British North America Act" shews the distribution of legislative powers and determines the limits of the Federal as well as of the Provincial Legislatures, indicating to the one as well as to the others, what is, and what is not subject to their jurisdiction. The clause 93 which forms by itself the subdivision entitled "Education" is the only one that indicates the extent as well as the limits of the powers of the Provincial Legislature relative to this important subject.

Instead of referring exclusively to the matters contained in the division V, under the title "Provincial Constitutions," if anything in the clause 92 could affect the dispositions of the clause 93 it would with equal reason affect the clause 91, and with the same stroke annul all the restrictions that the Imperial Act intended to put, and did put to the powers of Provincial legislature. Such cannot be the case. "The British North America Act" has divided and classified the matters of which it treats in a manner too evident and too lucid to leave room for such confusion of ideas.

It is therefore evident that the Section 93, while stating that "in and for each Province the legislature may exclusively make laws in relation to education" affirms at the same time that such laws shall be "subject and according to the provisions" set forth in its sub-sections, provided always that the inhabitants of each Province be in such legal conditions as would secure to them the benefit, or

if you like the word better, the restraint indicated by the said sub-sections.

Enough for the objection.

What now remains for me to examine, are the limits that the Imperial Act set to the powers of the Executive and Legislative authorities of the Province of Manitoba in relation to the educational laws "affecting any rights or privileges of the Protestant or Roman Catholic minority of the Queen's subjects in this Province.

No body I am sure will doubt of the nullity of a Provincial Act that would be in direct opposition to one, or several Imperial Acts, especially when those Imperial Acts are the same that have constituted the Provincial Legislature, stating what it should do, or leave undone.

In relation to Education, "the Protestant or Roman Catholic minority of the Queens' subjects" in the Province of Manitoba, are under the protection of two different Acts; the one being properly an Imperial Act, and the other although a Federal Act, having received from an Imperial Act, the confirmation which guards it, not only against the Provincial Legislature but even deprives the Federal Parliament, that has enacted it, of the right to repeal or amend it. Yes the Imperial Act 34 and 35 Victoria Chapter XXVIII cited as the British North America Act 1871 "was passed to validate the Manitoba Act and protect the rights conferred thereby.

Follow certain clauses of the Imperial Act last mentioned :

(3.) "The Parliament of Canada may from time to time with the consent of the Legislature of any Province of the said Dominion increase, diminish or otherwise alter the limits of such Province upon such terms and conditions, as may be agreed to by the said Legislature and may with the like consent, make provisions respecting the effect and operation of any such increase or diminution, or alteration of Territory in relation to any Province affected thereby."

5. "The following Acts passed by the said Parliament of Canada, and entitled respectively, 'An Act for the Temporary Government of Rupert's Land and the North-west Territory, when united with Canada,' and 'An Act to amend and continue the Act 32 and 33 Victoria chap. 3, and to establish and provide for the Government of the Province of Manitoba,' shall be and be deemed to have been valid and effectual for all purposes whatsoever, from the date at which they respectively received the assent, in the Queen's name, of the Governor-General of the said Dominion of Canada."

6. "Except, as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said Parliament, in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba, to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province."

I have made this lengthy quotation, in order to prove that the so-called Act of Manitoba is on the same footing with the "Act of British North America, 1867," consequently, the Federal Parliament can alter nothing relative to education, either in the one or the other of these Acts; and the Legislature of Manitoba cannot over-ride the limits assigned to it by the same laws. Let us see at present what guarantee the same Acts give to the Catholic

minority of the Province of Manitoba against the endeavors to deprive it of its separate schools, by substituting for the actual laws a system of education styled "Non-sectarian Public Schools."

We read as follows in the "British North America Act, 1867":

93. "In and for each Province the Legislature may exclusively make laws in relation to education, subject and according to the following provisions:

(1.) "Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools, which any class of persons have by law in the Province at the Union.

(2) "All the Powers, Privileges and Duties at the Union, by law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic subjects, shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

(3.) "Where in any Province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor General in Council, from any Act or Decision of any Provincial authority affecting any right or privilege of the Protestant or Roman Catholic Ministry of the Queen's subjects in relation to Education."

(4) "In case any such Provincial law as from time to time seem to the Governor-General in Council, requisite for the due execution of the provisions of this section is not made, or in any case any decision of the Governor-General in Council, or any appeal under this section is not duly executed by the proper Provincial authority in that behalf then and in every such case and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the provisions of this section, and of any decision of the Governor-General in Council under this section."

The ordinary power conferred upon the Provincial Legislature by this section 93 may be lessened by its four sub-sections or by some of them, as the case may be.

The first sub-section being liable to different interpretations, I agree to take no advantage of it; and to leave to opponents all they can claim. I will not even mention the protection that Catholics can claim under such *proviso*.

The second sub-section being exclusively for the Provinces of Ontario and Quebec and in no way applicable to Manitoba, except perhaps to aid in convincing the enemies of our system of education, that the House of Commons in England, the Lords Spiritual and Temporal of the United Kingdom, and Our Most Gracious Sovereign herself are of opinion that the Provinces of the Canadian confederation may have separate or dissentient schools without impeding the "triumph of the principle of justice," and without moving too far "from the more enlightened spirit of the age," otherwise they would not have enacted such legislation.

The third sub-section suffices by itself to baffle any attempt contrary to the fundamental principles of the School Law of Manitoba. People may say what they like for or against the system, but nobody can deny its existence.

Yes, every one knows that a "system of separate or dissentient schools exists by law in the Province of Manitoba, and that all our schools are either Protestant or Catholic, and such system has been "established by the Legislature of the Province," this is a right or privilege acquired by the Catholics

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and "appeal shall lie to the Governor-General in Council from any Act or decision of any Provincial authority affecting any rights or privileges" thus conferred by law.

Should an attempt be made in violation of this Imperial Act, no doubt the Catholics of Manitoba, members or not, of the Legislative Assembly, and helped by the Catholics of the Federal Parliament and of the Dominion shall lie their appeal, and thus appeal being a right the Governor-General in Council cannot overlook it. It is impossible to elude this sub-section and save the case of deplorable and dangerous blindness, every one should understand that it is an insuperable barrier erected by the Imperial Parliament to stay all efforts tending to deprive the Roman Catholic minority of Her Majesty's subjects in Manitoba of the rights or privileges they enjoy in relation to education.

The fourth sub-section gives power to the Federal Parliament to enact remedial laws, should the Provincial Legislature neglect to comply with the decisions of the Governor-General relative to the appeal above mentioned.

That shows that the appeal is not an empty word and that the law shall protect those to whom it grants a right and make good the maxim *ubi jus ibi remedium*.

Therefore the "British North America Act," instead of giving to the Provincial Legislature an unlimited power in relation to education, confines it to certain dispositions, and any action contrary to law, and intended for a Statute would be *ultra vires* and consequently null.

In order to complete conviction on the subject I will enquire of the opponents of Catholic Schools of Manitoba what they would think, what advice they would give and what action they would take, supposing the Catholic majority of Quebec deprive the Protestant minority of the same Province, of their Educational Rights or Privileges.

What noise would result not only in Quebec but throughout the Dominion and perhaps more in Manitoba than anywhere else?

What an amount of reproach and insult would be lavished on the Catholics of Quebec! From every quarter an energetic appeal should go to the Governor in Council. Undoubtedly His Excellency would feel, and would in reality be bound to recall to the Legislature of Quebec, the Dispositions of section 93, to prescribe the remedy to such an abuse of power, and if after all that the Legislature of Quebec did not hasten the enactment of the remedial law, the Parliament of Canada would not be slow in so doing, and such would be its duty.

The Catholic majority of Quebec will never commit such a fault, nor dream of such an injustice to the Protestant minority, why then should the Protestant majority of Manitoba be suspected of having such a disposition towards the Catholic minority in its midst? In a country like ours when all citizens enjoy equal rights, there cannot be two weights and two measures.

What the Protestant minority in Quebec is entitled to, the Catholic minority of Manitoba is equally entitled to. What would be unjust, sectarian illegal and unconstitutional on the part of the Cath-

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olic majority of Quebec, is equally unjust, sectarian, illegal and unconstitutional on the part of the Protestant majority of Manitoba, or rather *on the part of those who wish to prepare and excite the majority to depart from the path of justice and honor.*

Should any one be inclined to think that the "British North America Act 1867" applies merely to the four Provinces originally united by the said Act and not at all to the Province of Manitoba, that was established and admitted into the Confederation four years later; I would invite him to peruse the second section of the "Manitoba Act" that reads as follows:

(2) "On, from and after the said day on which the order of the Queen in Council shall take effect as aforesaid the provisions of the 'British North America Act 1867' shall, except these parts thereof which are in terms made, or by reasonable intendment may be held to be specially applicable to, or only to effect one or more but not the whole of the Province now composing the Dominion, and except so far as the same may be varied by this Act, be applicable to the Province of Manitoba, in the same way, and to the like extent as they apply to the several Provinces of Canada, and as if the Province of Manitoba, had been one of the Provinces originally united by the said Act."

Doubtless the above Section is too clear and explicit to need comment. It of course prevents the application to Manitoba, of the second sub-clause of clause 93 of the "British North America Act" that refers exclusively to Ontario and Quebec; but on the other hand, it applies to Manitoba, the other dispositions of the "British North America Act" in relation to education, and consequently lessens the

power of the Legislature of Manitoba, gives right of appeal to the minority binds the Governor-General to remedy the evil, and in case of necessity authorizes the Canadian Parliament to enforce by remedial laws the decision of the Governor General upon such appeal.

It cannot be objected that the Province of Manitoba is not entitled to the dispositions of the "British North America Act" relative to Education, because the Act of Manitoba enacted subsequently on the same subject. Such pretension is quite inadmissible, it would be equally true to say that the 6th clause of the "Manitoba Act" relative to the Lieutenant Governor being identically the same as the 58th section of the "British North America Act" all the dispositions of the latter relative to the Lieutenant Governors of the different Provinces do not apply to the Lieutenant Governor of Manitoba.

The dispositions of one law cannot annul the dispositions of the other except when contradictory; but such cannot occur when both Acts say the same thing, or when the one amplifies on the contents of the other.

The relation between the two Acts in question is as follows: The 93rd section of the "British North America Act" recognizes the power of the Provincial Legislatures to pass laws relative to education, but subject to the dispositions mentioned *in its sub-sections*, and that, I repeat, is the law in Manitoba as well as in other Provinces, while the 22nd section of the Manitoba Act recognizes to the Legislature of this Province the power to pass laws relative to education, but subject to the dispositions

mentioned in its own sub sections ; and please observe that these last dispositions, far from being in opposition to those of the " British North America Act," are merely an extension and development of the same, consequently both Acts concur in granting protection to the Catholic minority of Manitoba, and justify the assertion that the minority of the Prairie Province is better safeguarded than that of the old Provinces.

The fact is obvious to any one that takes the trouble to read the 22nd clause of the Manitoba Act, while bearing in mind that the said Act has all the force of an Imperial Act.

22. " In and for the Province, the said Legislature may exclusively make laws in relation to education, subject and according to the following provisions :

(1.) " Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the Province at the Union.

(2.) " An appeal shall lie to the Governor-General in Council from any act or decision of the Legislature of the Province, or of any provincial authority, affecting any Right or Privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education.

(3.) " In case any such Provincial law as from time to time seems to the Governor-General in Council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the Governor-General in Council on any appeal under this section is not duly executed by the proper Provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor-General in Council under this section "

In perusing the above section it is easy to observe its resemblance with the 93rd section of the "British North America Act." What now remains to discern is the *different wordings* of the two laws, and then decide if the *difference* tends to diminish or to amplify, on the guarantee of protection given to the minority of Manitoba. The difference is as follows :

Act of 1867.

93. In and for EACH PROVINCE the Legislature . . .

(1.) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools, which any class of persons have BY LAW . . .

(2.) (Only for Ontario and Quebec.)

(3.) Where in any Province a system of Separate or Dissident Schools exists by Law at the Union, or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor-General in Council from any Act or Decision of any PROVINCIAL AUTHORITY affecting any Right or Privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education.

(4.)

Act of 1870.

22. In and for THE PROVINCE the SAID Legislature. .

(1.) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools, which any class of persons have BY LAW OR PRACTICE . . .

(2) An appeal shall lie to the Governor-General in Council from any Act or Decision of the LEGISLATURE OF THE PROVINCE, OR OF ANY PROVINCIAL AUTHORITY affecting any Right or Privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education.

(3.)

There is not the slightest doubt that what precedes

proves that the Manitoba Act amplifies on the protection granted to the minorities by the Imperial Act of 1867, instead of diminishing it. By the law of 1867 the Legislature of EACH PROVINCE is obliged to safeguard any Right or Privilege with respect to Denominational Schools which any class of persons have *by law*, while by the Act of 1870 the Legislature of the Province of Manitoba has the same obligation concerning the rights and privileges held by *law or practice*.

By the Act of 1867 an appeal shall lie to the Governor-General in Council, *but solely when a system of separate schools exists by law*; while the Manitoba Act *authorizes the same appeal in any case affecting any right or privilege even without a system of education previously established by law*.

The Manitoba Act extending and amplifying the protection, lessens in the same proportion the power of the Provincial Legislature on the subject.

I am not the only one that views the matter in this light, but among other testimony in corroboration, I could submit the appreciation of three important newspapers of the Province of Ontario, the "*Toronto Daily Globe*," the "*Ottawa Free Press*," and the "*Hamilton Evening Times*."

1. The *Toronto Daily Globe*. This paper had at first countenanced the movement hostile to Denominational Schools of Manitoba. Mature consideration of the subject, and sense of justice subsequently prevailed, as it appears in the issue of 27th November, 1876, of which I give the following extracts:

PUBLIC EDUCATION IN MANITOBA.

"We noticed recently the movement in Manitoba having for its object the reform or improvement of the Public School law of that Province, and referred to the efforts made in other parts of the Dominion to effect such arrangements as, while securing the practicable system of education, are designed to protect the rights and consult the conscientious scruples of minorities. But it must not be understood from this that in Manitoba, any more than elsewhere the rights of minorities can be overridden or ignored.

The Local Legislature may, of course, effect any changes in the administration of the school laws and not violate existing rights and privileges, but can do no more than this. The Manitoba Act, which is the constitutional charter of the Province of Manitoba, contains the same provisions, that are to be found in the British North America Act in regard to the rights of minorities in the other Provinces in this respect.

The 22nd section itself, as well as the sub-sections, adopt literally the text of the British North America Act. It may be supposed, however, that the Manitoba Act having emanated from Dominion Parliament and not being as was the British North America Act a product of Imperial Legislation, might be altered or amended by the same authority that originally enacted it. But this has been provided against by an Imperial Act, 34 and 35 Victoria, Chap. XXVIII, passed for the express purpose, among other objects, of giving the Manitoba Act validity and protecting the rights thereby conferred from the danger above suggested.

The Parliament of Canada has no power to make the smallest change in the terms guaranteed by the Manitoba Act; and that the Local Legislature can only do so in respect of such matters as are specially confided to its jurisdiction, of which as the quotation we have given from the 22nd section shows, the right of minorities as existent at the time of union is not one."

2. "*The Ottawa Free Press.*" The journal of the Capital before perusing the above article of

the *Globe* and under the unfavorable impression caused by another issue of the same organ, wrote as follows on the 1st December, 1876 :

SEPARATE SCHOOLS IN MANITOBA.

"A discussion is going on in the Province of Manitoba just now on the subject of the school system of that Province. The agitation which is now sought to be raised, apparently more by the *Toronto Globe* than by the people of the Prairie Province looks ostensibly to the following objects, viz. : the abolition of the present Board of Education and the establishment of a non-sectarian system, compulsory use of English text-books in the schools, all public schools to be subject to the same regulations ; the appointment of inspectors ; establishment of a training school for teachers, and a new plan for the allotment school moneys. This means, in short, the total abolition of the separate school system, and considering the nature of the subject, and the delicate character of the interests affected, it appears to us that it would be the wiser course on the part of our Toronto contemporary to leave the agitation to those more immediately interested.

The only possible result can be to stir up sectarian strife and heart burnings such as unhappily prevail in New Brunswick, and which are most undesirable elements to introduce in a young and growing community comprising a mixed population, both as to language and religion.

It is an agitation that could not fail to be attended with a considerable degree of asperity, trenching upon dangerous ground, which it would be well to avoid and which it is no part of the duty of the people or journals in this part of the Dominion to assist in bringing about.

The discussion is more injudicious, as there is no possible means of attaining the object sought professedly by this agitation. The Manitoba Act under whose authority separate schools exist in that Province, and which forms a portion of the constitution of the country, was by Imperial Act established beyond the power of the Parliament of the Dominion or Legislature of the Province to alter.

Separate schools in Manitoba can only be disestablished by the Act of the Catholic body itself, and we may rest assured, from the well-known policy of that denomination, that such action will never be initiated by them. Under all these circumstances, as we have pointed out before, the agitation of the subject and especially its agitation from outside the Province, can lead to no result so far as its professed object is concerned, while it may be productive of very undesirable results, by stirring up sectarian strife, discord, producing irritation and creating heartburnings and animosities which would disturb the harmony and might seriously injure the welfare of the Province."

3. The *Hamilton Evening Times*. The above article of the "*Free Press*," and that of the *Globe* which it combats suggested the following remarks which I read in the *Hamilton Evening Times* of the 9th Dec. 1876 :

"The *Globe* is urging that the schools in Manitoba should be made unsectarian, while the *Ottawa Free Press* shows very clearly that it is impossible that they would be so made without Imperial Legislation. Manitoba has, if anything, a stronger Imperial guarantee for the continuance of its separate schools than the older Provinces, so that the discussion in Manitoba of the question raised by the *Globe* can only do mischief without any possibility of good results of any kind arising. The example of Ontario proves that it would be a good thing if all the Province had separate schools, and it is most certainly an unmingled evil to raise an agitation to take them from Provinces that already have them, more especially, if those who agitate for this can only have the agitation for their pains."

The three above journals, together with many others, some of which, although hostile to separate schools, are of my opinion that the establishment in Manitoba of a system of education opposed to that now existing is impossible.

The antagonists of the Catholic schools of our Province feel encouraged in their endeavours to

overthrow them, because the "Common School Act, 1871," of New Brunswick was not disallowed, and that, as yet, the Catholics of that Province have to abide by it. Evidently, prejudice blindfolds, otherwise it is impossible to not see the essential difference between the position of the Catholics of Manitoba in 1877, and that of their co-religionists of New Brunswick in 1871. *All the arguments* employed against the Catholics of New Brunswick and the *legal opinions* adverse to them, may be resumed as follows: *the law having conferred no right or privilege to the Catholics before or after the union, they do not enjoy that of Appeal*, consequently *the Legislature of New Brunswick has an open field for legislation on education*.

Even with the supposition that this opinion be correct, who can fail to discover that it is impossible to apply it to Manitoba, the position being entirely different.

New Brunswick *had no law* establishing separate schools, while, on the contrary, Manitoba *has laws establishing them*. The privileges enjoyed by the Catholics of New Brunswick were not conferred *by law*; in Manitoba it is *the law* that confers on Catholics the rights and privileges they enjoy. The sub-sections of section 93 having no application in New Brunswick, the Imperial Act did not in any way restrict the powers of the Legislature of that Province in the enactment of its educational laws, nor grant to the minority the right of Appeal, while the 3rd and 4th sub-sections having their entire application in Manitoba, the Imperial Act lessens in as much the right of Ap-

peal. In a word, as long as *yes* will not mean *no* and *no* mean *yes*, the arguments brought against the Catholics of New Brunswick have all their force in favor of the Catholics of Manitoba; and that, let it be remembered, even without considering anything else than the British North America Act, and adopting the interpretation of the same Act as given by those who placed the Catholics of New Brunswick in the situation they so reluctantly undergo.

The impossibility to abolish separate schools in Manitoba becomes still more apparent when, after examining the Act of 1867, we re-consider that of 1870. By the latter, which is that of Manitoba, it is not necessary, as already shewn, that the rights or privileges enjoyed by the minority be conferred *by the law*; it suffices that they be so *by practice*. This last word alone, had it been found in the Act of 1867, would have safeguarded the Catholics of New Brunswick.

By the Act of 1870, the right of Appeal is not, as in the Act of 1867, subject *to the condition of the pre-existence of a system of separate or dissentient schools established by law*. No, by the Act of 1870 *there is always room for Appeal*, from any violation of right, *even without the pre-establishment by law of a system of Denominational schools*; for it must be observed that the clause does not determine what must be the origin of such right; it suffices that they have been and are enjoyed either by law, by practice, by treaties, or in any way whatsoever.

Without having ever been in the councils of those who drew up the law of 1870, it is easy to

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see why the same Act in its section 22 repeats, while modifying it, the section 93 of the Act of 1867. The storm that broke out in New Brunswick in 1871 had already had its forebodings the year before. The framers of the Confederation noticed that they had involuntarily left an omission in the law of 1867, relative to education; and in order to not expose the Province of Manitoba to the difficulties they foresaw, but too late, for New Brunswick, they resolved to complete the Act of 1867 by that of 1870. This explains how the two Acts differ while resembling each other.

Whatever may have been the motive of this double legislature on the same subject, both Acts exist; they both safeguard the minority, and come to paralyze any effort made to deprive it of its acquired rights.

I had just finished what precedes when I received the "*Daily Free Press*" of the 19th January, 1877, in which I find that the Protestant section of the Board of Education had assembled on the eve at Winnipeg, and that an Executive Committee of the same had submitted the draft of a bill, which they were instructed to prepare by a resolution passed Oct. 14th, last.

In November, 1876, the "*Toronto Globe*" had already disclosed the mystery, and made known to the public in Ontario what had been withheld from the public in Manitoba, notwithstanding the peculiar interest the latter should take in transactions that concern themselves alone.

The measure proposed and now published by the Protestant Section of the Board of Education is,

as it appears, based on nine points of which the two principal are, "The establishment of a purely non-sectarian system of public schools," and "the abolition of the Board of Education in its present sectional character, and the appointment of a new Board without sections."

In the preceding pages I have opposed the scheme in question, but I must confess that I opposed it without being either able or willing to believe that it had been formed by a Board including men of learning, high standing in society and deservedly enjoying respect and esteem. I did not think that a plan bearing such a taint of illegality could be the fact of a Board established by the law and acting officially in its name.

The few details furnished by the press concerning the meeting of the 19th inst. have a significance that will escape no one.

The Protestant section of the Board is composed of twelve members, *only five were present*, and one of them could not repair from observing that he "considered the presence of only five members when so important a matter was to come into consideration as very discouraging."

"The Reverend President and the Reverend Secretary expressed a doubt as to the policy of discussing the proposed measure when there was only a bare quorum of the Board present."

Another Reverend member "expressed his personal views as strongly opposed to the teaching of religion in the public schools," while a lay member favored the inculcation in the public schools of fundamental religious principles."

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As it often occurs *e pluribus unum* "it was finally resolved that the Board adjourn till Friday, the 2nd prox., at 2 p.m., and that the draft of the proposed bill be revised and printed, and copies sent to the Members before that date."

The above meeting, and the circumstances that characterize it, furnish abundant matter for comment, and such will certainly be given later. For my part, I must just now, keep within the bounds of the legal question. I am quite convinced, and I think I have proved, that the law is contrary to the proposed change, and I have not the slightest doubt that the Legislative and Executive authorities whose combined action is requisite to the passage and enforcements of our statutes, will stand to their duty, repulse the injustice that threatens the minority and not suffer such a stain to soil the history of our Province.

I shall only add a few words to explain the reason of my extreme surprise, on seeing that the Protestant section not only ask for a thing *illegal in itself*, but, moreover, ask for it in *a manner contrary* to the spirit of our Provincial statutes and implicitly condemned thereby.

Our Provincial laws create a *General Board of Education* and invest it with power to make such regulations as it may think proper for the *general organization* of schools. This Board has consequently the duty to consider the *general interests of education*, and is composed of twenty-one members, twelve Protestants, and nine Catholics.

The same Provincial law requires that the General Board shall resolve itself into two Sectional

Boards or committees, the one composed of the Protestant, and the other of the Catholic members, of the said General Board, and that to each of those respectively be referred *the administration of the schools belonging to the section.*

The sectional Boards have consequently the duty to consider the *particular interest and management of the schools of their respective denominations.*

The General Board may perhaps be styled a Federal Senate of Education and the sectional Boards are the executive committees of their respective sections. This is not at all unusual, and is exemplified in numerous organizations, among others in the case of certain universities that have their Senate, and besides that, distinct Faculties enjoying complete independence among themselves, and even with regard to their Senate except in matters concerning the general organization.

I fail to become convinced that it needs an unusual amount of intelligence to detect the difference that exists between the duties of the General Board and those of the Sectional Boards; no more than that it needs an extraordinary amount of good will to allow these different Boards to act side by side without encroachment or uneasiness.

One must have never studied our law of education, or else faintly endeavored to penetrate its operation, to say that: "under the present law we have virtually two systems covering the same ground, which are both impractical and inefficient."

We have but one system of education, which like all other organizations, at the while, Legislative

and administrative, comprehends different ramifications, that is to say ; *the General Board, Sectional Boards, the Superintendents, the Board of Trustees, &c. &c.* As many *distinct* branches grafted on the same tree, THE LAW, whence they derive the sap that imparts them life and maintains their strength and vigor, provided each branch remain *in its own place*. Unfortunately, the last condition was done away with, in the occurrence I take objection to.

What was considered in the meeting of the 19th inst., is undoubtedly a question of *general interest* in education, therefore according to the spirit and even to the letter of law, becomes the province of our *general Board*. To treat such question of *general interest* in a *Sectional Board* is to make little of it, and to reduce it to the proportion of a denominational or rather of a Sectarian object.

Since members of the Board of Education thought proper to agitate a question of such magnitude and universal interest, why did they not bring it before the General Board ?

Would it be, perchance, that feeling the proposed change to be so offensive to Catholics it was thought more advisable to work underhand, and to not even mention the object in view to the nine Catholic members of the board ?

If on the contrary the intended scheme was supported by good and solid reasons, its authors should have been glad to make it known to their Catholic colleagues. Reason is always at home among sensible people. Who knows but that the Catholics themselves might have something reasonable to say on the subject ? It is with the strike of ideas, as

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with that of flints ; it may give light, and such light as may sometimes modify opinions. This was the case with the *Toronto Globe* in the month of November, when after expressing its views in favor of the plan soon after declared that the same was an impossibility.

It was considered with reason, as "very discouraging that so important a matter" should be referred to the tribunal of "five" Judges, that had no right to decide officially on the matter. A little more discussion might have brought light, certainly not prejudicial to the subject.

Still more, Protestants have the majority in the Board ; even with the supposition, although such seems impossible, that they had no good reasons in support of their views, or that the Catholics had none to oppose to them ; or what is better still, that the convictions on both sides are so firm that it would be useless to attempt to modify them, the advantage was still siding with the number ; and as twelve exceed nine, if the twelve be as unanimous as the nine, they would have carried the measure in the General Board.

Had the whole transaction been conducted in that way, the measure would appear to me *equally illegal in itself* ; but I could not, and I would not blame *the mode of action*. It would be simply a *regular authority* acting *officially* in matters of its ORDINARY competence, and in the *manner* provided by the law.

Unfortunately, quite the reverse took place, one section only was invited to meet ; some of its members answered the call ; others abstained, and there,

under the pretence and the name of an official position five gentlemen examined and decided on a question not belonging to them *as a body*, though they may claim the right to examine it *as individuals*, and they decided in the *name of the Board* that the endeavor must be made to crush the Catholic's section. Instead of busying *themselves about and for themselves* as to the changes that might satisfy those that *are said* to be dissatisfied with the actual management of their schools, why do they endeavor to throw on the Catholic section the responsibility that does not belong to it, and that in matters which by the actual law, are beyond its control?

What a queer idea to fancy that all that is said against the administration of schools will be stopped by pronouncing against the Catholic section, the famous sentence: "*Let it be destroyed!*" "*Delunda est Carthago.*"

It is words as with drums, the emptiest are the most sonorous, and *vice versa*. REFORM is spoken of, and *with that big, very big word*, it is thought that the population is to be startled, that the Members of the Legislature will be *influenced by the fear of losing their seats at the next general election*; and with the aid of the stratagem, personal views and secret animosities are expected to prevail against Catholics. Evidently this last result, though not professedly, is in reality the sole object in view.

In the name of the law and of justice let me be permitted to make an appeal to the good sense of the Protestant population and to the Members that represent it in the Legislative Assembly, to beg of them not to forget that the section of the Board

that exclusively governs their schools has the right to do by itself, and for them, all that is necessary for their good administration, and that the reform spoken of is merely in view to injure Catholic schools. The new scheme affords *no new facility for the success of Protestant schools*, while it would largely impede that of the Catholic schools. Above all, the scheme that is intended is *illegal in itself*, and in the *manner it has been prepared* by the sectional Board.

I say the sectional Board, notwithstanding my convictions that there are men in that Board worthy of my respect, and animated with such broad views that they would not *wilfully* mingle in a manœuvre so narrow and unworthy of them.



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